

## Message Text

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PAGE 01 TOKYO 03141 070744Z  
ACTION L-03

INFO OCT-01 EA-07 ISO-00 SCA-01 JUSE-00 CIAE-00 INR-07  
NSAE-00 PRS-01 /020 W  
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R 070731Z MAR 77  
FM AMEMBASSY TOKYO  
TO SECSTATE WASHDC 5925

C O N F I D E N T I A L TOKYO 3141

E.O. 11652: GDS  
TAGS: PFOR, JA  
SUBJECT: US/JAPAN EXTRADITION TREATY

1. EXTRADITION NEGOTIATIONS ENDED WITHOUT REACHING DRAFTING STAGE, WITH MOST OF WEEK DEVOTED TO DISCUSSION AND CLARIFICATION OF LEGAL SYSTEMS ON BOTH SIDES. WE DID, HOWEVER, REACH AGREEMENT ON INCLUSION OF NEW CRIMINAL OFFENSES SOUGHT BY BOTH SIDES. WE ALSO AGREED TO LEAVE PROVISION ON EXTRADITION OF NATIONALS DISCRETIONARY, AS IN PRESENT TREATY.

2. WE AGREED NEXT ROUND OF NEGOTIATIONS WILL BE IN WASHINGTON, PROBABLY LATE MAY OR EARLY JUNE, WITH VIEWS IN INTERIM TO BE CONVEYED THROUGH JAPANESE EMBASSY IN WASHINGTON.

3. WE MIGHT HAVE PROBLEMS IN SOME AREAS DUE TO JAPANESE EXTRADITION LAW OR OTHER INTERNAL LAWS. JAPANESE HAVE INDICATED TO US THEY MIGHT HAVE DIFFICULTY IN WRITING INTO TREATY PROVISIONS WHICH ARE NOT IN, OR CONFLICT WITH, INTERNAL LAW. THIS INCLUDES PROVISIONS ON RETURN OF PROPERTY, TRANSIT, AND WAIVER PROVISION. SIMILARLY, WE MAY HAVE PROBLEM IN DRAFTING ARTICLES MENTIONING STANDARD OF PROOF REQUIRED IN DOCUMENTATION, AS JAPANESE STANDARD TO INITIATE PROSECUTION IS "REASONABLE GROUND" TO BELIEVE PERSON HAS COMMITTED CRIME, AND THEY HAVE REJECTED OUR SUGGESTED LANGUAGE.

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PAGE 02 TOKYO 03141 070744Z

4. WE MIGHT ALSO HAVE SOME PROBLEMS IN DRAFTING SUITABLE LANGUAGE SPECIFYING WHO MAY BE SUBJECT OF EXTRADITION REQUEST. JAPANESE DRAFT (ARTICLE 1) PROPOSED LANGUAGE "ANY PERSON ... AGAINST WHOM CRIMINAL PROCEEDING HAVE BEEN INSTITUTED." CRIMINAL PROCEEDINGS ARE "INSTITUTED" UNDER JAPANESE LAW AT INVESTIGATING STAGE, SO THIS LANGUAGE IS NOT ACCEPTABLE TO US. JAPANESE DO NOT LIKE OUR SUGGESTED LANGUAGE (OUR ARTICLE ONE) WHICH USES TERM "FOR

PROSECUTION" BECAUSE, IN JAPANESE LAW, AFTER INVESTIGATION, A MAN IS ARRESTED AND PUT IN JAIL FOR PERIOD OF 18 DAYS, AFTER WHICH EQUIVALENT OF INDICTMENT IS ISSUED. (THIS IS WHAT HAPPENED TO FORMER PRIME MINISTER TANAKA). UNDER JAPANESE LAW, PROSECUTION DOCUMENT HAS TO BE DELIVERED TO PERSON CHARGED WITHIN TWO MONTHS OF HIS ARREST. THEY CAN'T INITIATE PROSECUTION UNTIL THERE HAS BEEN ARREST. THUS, JAPANESE WANT EXTRADITION TO APPLY TO THEIR ARREST STAGE, AND THIS WAS, IN FACT, STAGE OF PROCEEDINGS INVOLVED IN BOTH SAKAGUCHI AND MARTIN CASES. THEY HAD TO GET BOTH MEN BACK TO ARREST THEM SO THAT THEY COULD BE FORMALLY CHARGED.

5. WE AGREED ON PRESS GUIDANCE AS FOLLOWS: 1) WE HAVE MADE AN ORAL REVIEW OF THE PRESENT TREATY. 2) WE HAVE EMPHASIZED CLARIFICATION OF THE LEGAL SYSTEMS OF THE RESPECTIVE SIDES SINCE PROVISIONS OF DOMESTIC LAWS ARE DIFFERENT: 3) WE HAVE NOT YET REACHED THE DRAFTING STAGE; AND 4) WE HAVE REACHED A BASIC MEETING OF THE MINDS ON INCLUSION OF NEW CRIMES AND THE TREATMENT OF NATIONALS. KYODO NEWS SERVICE HERE YESTERDAY, HOWEVER, REPORTED THAT NEGOTIATIONS "FAILED TO AGREE" ON WHICH CRIMES SHOULD BE INCLUDED IN NEW TREATY.  
SHOESMITH

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## Message Attributes

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**Review Markings:**  
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